

This letter discusses application of the Retailers' Occupation Tax to Buy and Hold orders which are delivered to the customer at the taxpayer's warehouse in Illinois. See 86 Ill. Adm. Code 130.605. (This is a PLR.)

February 6, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 17, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

The purpose of this letter is to request a private letter ruling from the Illinois Department of Revenue in accordance with 2 Ill. Adm. Code § 1200.110 on behalf of each of the above-referenced taxpayers ('Taxpayer' or 'Taxpayers'). Specifically, Taxpayers each desire a ruling that its 'Buy and Hold' sales, described below, are subject to tax under the Retailers' Occupation Tax ('ROT') Act, 35 ILCS 120/1 *et seq.*

#### BACKGROUND

Each Taxpayer is (i) an Illinois entity, (ii) a wholly-owned direct subsidiary of ABC, an Illinois corporation, and (iii) has its principal office and distributes its merchandise from a warehouse (the 'Warehouse') at ADDRESS, Illinois. Prior to April 1, 2005, TAXPAYER was engaged in the business of selling computer equipment and accessories to customers (predominantly business customers) in all 50 states by mail order, telephone and Internet, as well as at its retail store in CITY (a second retail location in CITY2 is expected to close shortly). Prior to April 1, 2005, XYZ sold computer equipment and

accessories to non-governmental entities by mail order, telephone and Internet, and through a sales force that covered territory in all 50 states. On April 1, 2005, XYZ merged with and into TAXPAYER and their respective operations as described above are now combined. TAXPAYER sells to governmental, educational and other not-for-profit entities (and a few for-profit entities) in the same manner as TAXPAYER after its merger with XYZ.

Each Taxpayer has customers in all 50 states. In general, when a customer places an order, the customer will require that Taxpayer ship the items ordered to one or more of the customer's locations. The customer's purchase order will specify the delivery location for each item, or group of items, ordered. Taxpayer will then generally deliver each item to a common carrier of its choosing at its dock f.o.b. destination.<sup>1</sup> Taxpayer does *not* pay ROT with respect to the sale of any such items shipped to a non-Illinois location. From time to time, a customer placing an order will pick the order up with its own trucks at Taxpayer's dock. Taxpayer pays ROT with respect to all such sales. Taxpayer also pays ROT on all 'over the counter' sales at its CITY retail store location. None of the sales heretofore described are the subject of this ruling request.

In certain circumstances, a customer and Taxpayer will enter into a 'Buy and Hold' Agreement (the 'Agreement,' a copy of which is attached as Exhibit A) under which the customer will place a purchase order for merchandise (a 'Buy and Hold Order'), pay for the merchandise and have Taxpayer store the merchandise at the Warehouse pending delivery instructions. The customer does not know at the time of purchase where it will have each item shipped.

Following are the pertinent terms of the Agreement:

- The customer is permitted to place Buy and Hold Orders from time to time by using a Buy and Hold Order form. Agreement Section 3.
- Ownership, title and a UCC § 2-501 'special property and insurable interest'<sup>2</sup> to the products specifically listed on a Buy and Hold Order is transferred to the customer upon acceptance of the products by Taxpayer on Buy and Hold terms. Agreement Section 4. Title passes to the customer at the Warehouse. The customer is invoiced for the products when they are set aside in Taxpayer's warehouse as Buy and Hold, on a unit by unit basis. Agreement Section 9. Taxpayer pays ROT on all amounts invoiced as Buy and Hold. *Id.*
- Upon notification by the customer, Taxpayer will release the products from Buy and Hold for pick-up by the customer. Upon request by the customer, Taxpayer will arrange with the customer to have the products shipped to locations designated by the customer at that time. The designated locations may or may not be Illinois. Agreement Section 5.
- If the customer does not designate a shipment location by a date specified in the Agreement, Taxpayer will ship the product to the customer at a default address specified in the Agreement. Agreement Section 6.
- Under section 12 of the Agreement, the delivery location for *all* products is specified to be the Warehouse in CITY, Illinois.

Taxpayer is shown as the 'consignor' or 'shipper' with respect to every Buy and Hold item delivered to a common carrier at the Warehouse for shipment to non-Illinois locations.

#### RULING REQUESTED

Taxpayers respectfully request that the Department rule that the gross receipts from the sale of each item under a Buy and Hold Agreement are subject to ROT.

#### ANALYSIS

In general, ROT applies to gross receipts from the sale of tangible personal property by an Illinois retailer if the property is located in Illinois at the time of sale and is delivered in Illinois to the purchaser or the purchaser's representative. 86 Ill. Adm. Code ('Reg.') § 130.605(a). ROT does not apply to an item sold by an Illinois retailer that is shipped by the retailer or delivered by carrier to a non- Illinois location if (i) the retailer is obligated under the terms of his agreement with the purchaser to deliver the item either by means of the retailer's own facilities or by carrier, and (ii) if delivery is to be made by carrier, the retailer is the consignor or shipper on the bill of lading. Reg. § 130.605(b) and (c).<sup>3</sup>

It is plain under the Agreement that the Taxpayer does not come within the exception afforded by Reg. § 130.605(b) and (c) because Taxpayer is *not* obligated at the time the Agreement is entered into—or at the time title, ownership and an insurable interest in the goods passes to the customer—to deliver the goods outside Illinois. Specifically, at the time that Taxpayer accepts a Buy and Hold Order it either (i) segregates existing inventory and transfers title to the customer at that time, or (ii) orders the goods from a manufacturer or other distributor, and, upon receipt, segregates the goods and transfers to the customer title and a special property and insurable interest under UCC § 2-501. In either case, Taxpayer thereafter stores in its warehouse customer-owned goods with an undetermined shipping or delivery location. Significantly, delivery under the Agreement is made to the customer at Taxpayer's Illinois warehouse. Thereafter, Taxpayer will, upon request, cooperate with the customer to arrange for the items to be shipped by carrier from Taxpayer's warehouse to a location to be designated by the customer, which may or may not be in Illinois.

In short, the contract is accepted and ownership, title, risk of loss and an insurable interest in the goods all pass to the customer in Illinois well before the customer designates whether the items are to be shipped outside Illinois. In the circumstances, Taxpayer respectfully requests that the Department rule that gross receipts from the sale of tangible personal property under the Agreement are subject to ROT.

#### REQUIRED STATEMENTS

1. The tax period at issue is current and future periods.
2. No audit or litigation regarding this tax period or the issues presented is pending with the Department.
3. To the best of the knowledge of both the Taxpayer and the undersigned, (i) the Department has not previously ruled on the same or a similar issue of the taxpayer or a

predecessor and (ii) neither the Taxpayer nor any representative has previously submitted the same or a similar issue to the Department and withdrawn it before a letter ruling was issued.

4. Favorable and contrary authorities have been discussed above.
5. A Power of Attorney for each taxpayer is attached.
6. A Deletions Statement will be provided.

## **DEPARTMENT'S RESPONSE**

Based upon the information and exhibits provided we agree that the gross receipts from the sale of each item under a Buy and Hold Agreement are subject to Retailers' Occupation Tax. As we understand it, Buy and Hold orders are accepted in Illinois. At the time that the taxpayer accepts a Buy and Hold order it either (i) segregates existing inventory and transfers title to the customer at that time, or (ii) orders the goods from a manufacturer or other distributor, and, upon receipt, segregates the goods and transfers to the customer title and a special property and insurable interest under UCC Section 2-501. In either case, the taxpayer thereafter stores in its warehouse customer-owned goods with an undetermined shipping or delivery location. Delivery under the Agreement is made to the customer at the taxpayer's Illinois warehouse. The taxpayer will then, upon request, cooperate with the customer to arrange for the items to be shipped by carrier from the taxpayer's warehouse to a location to be designated by the customer, which may or may not be in Illinois. In short, the contract is accepted and ownership, title, risk of loss and an insurable interest in the goods all pass to the customer in Illinois before the customer designates whether the items are to be shipped outside Illinois.

Since the Buy and Hold order is accepted in Illinois and the tangible personal property is delivered to the customer in Illinois, the order is subject to Retailers' Occupation Tax and any local taxes. See 86 Ill. Adm. Code 130.605.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote  
Associate Counsel

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<sup>1</sup> Under Taxpayer's standard policies it will also ship via a common carrier of the customer's choosing, or via one of the carriers Taxpayer generally uses but using the customer's billing number on the shipment. In either case, Taxpayer is shown as the shipper or consignor on the shipping documents with the carrier, but the items are shipped f.o.b. Taxpayer's dock. Taxpayer does not pay ROT on any such items shipped to non-Illinois locations. These policies do not generally apply to the 'Buy and Hold' orders that are the subject of this ruling request and that are described in detail in the text, following.

<sup>2</sup> Section 2-501 of the Uniform Commercial Code, 810 ILCS 5/2-501.

<sup>3</sup> Reg. § 130.605(b) and (c) provide:

(b) The tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided that the delivery is actually made.

(c) Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State. The fact that the purchaser actually arranges for the common carrier or pays the carrier that effects delivery does not destroy the exemption. However, it is critical that the seller is shown as the consignor or shipper on the bill of lading. If the purchaser is shown as either the consignor or the shipper, the exemption will not apply.